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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
07/911,400	07/30/92	FENN	J 848.004

EXAMINER  
NGUYEN, K

2501/0125

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ART UNIT	PAPER NUMBER
9	2506

DATE MAILED:

01/26/94

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined  Responsive to communication filed on 10-15-93  This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s),        days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

1.  Notice of References Cited by Examiner, PTO-892.
2.  Notice re Patent Drawing, PTO-948.
3.  Notice of Art Cited by Applicant, PTO-1449.
4.  Notice of Informal Patent Application, Form PTO-152.
5.  Information on How to Effect Drawing Changes, PTO-1474.
6.  \_\_\_\_\_

**Part II SUMMARY OF ACTION**

1.  Claims 1-66 are pending in the application.
2.  Claims 1-13 have been cancelled.
3.  Claims \_\_\_\_\_ are allowed.
4.  Claims 14-66 are rejected.
5.  Claims \_\_\_\_\_ are objected to.
6.  Claims \_\_\_\_\_ are subject to restriction or election requirement.
7.  This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8.  Formal drawings are required in response to this Office action.
9.  The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are  acceptable.  not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10.  The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been  approved by the examiner.  disapproved by the examiner (see explanation).
11.  The proposed drawing correction, filed on \_\_\_\_\_, has been  approved.  disapproved (see explanation).
12.  Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has  been received  not been received  been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_
13.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14.  Other

**EXAMINER'S ACTION**

35 U.S.C. § 101 reads as follows:

"Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title".

Claims 14-66 are rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter.

No patentable weight is given to a composition of matter because this composition of matter, which comprises a population of multiply charged ions consisting of a plurality of sub-populations derived from a sample substantially made of a polyatomic parent molecular species, is a chemical compound. Therefore, the composition of matter is considered as an intermediate product to make other compounds, without regard for the usefulness of latter compounds. Such an intermediate product is not considered to be patentably significant, See "intermediate," In re Joly et al., 153 U.S.P.Q. 45 (C.C.P.A. 1967) and In re Kirk et al., 153 U.S.P.Q. 48 (C.C.P.A. 1967).

Response to the amendment filed on October 15, 1993

The rejection applied to claims 14-66 under 35 U.S.C. § 102 (b) being clearly anticipated and inherent from Fenn et al. is now withdrawn because applicant's remarks rebutting this rejection has been found to be persuasive; in that the population of multiply charged ions which consists a plurality of sub-populations are not inherent from the teaching of the prior art.

Serial Number: 07/911,405

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Art Unit: 2506

The claims 14-66 are now rejected as non-statutory subject matter under 35 U.S.C. § 101, see the rejection above.

Any inquiry concerning this communication should be directed to Kiet T. Nguyen at telephone number (703) 308-4855.

KN

KN

January 19, 1994

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